FILE COPY

IN THE

Supreme Court of the United States

October Term, 1946.

No. 229

WILLIAM TALMADGE SPEARS, BETTIE TUNSELL, and ISAIAH H. SPEARS, (I. H. SPEARS),
Petitioners-Appellants,

vs.

EVA MAE SPEARS, Individually and EVA MAE SPEARS, as Special Administrator of the Estate of DR. MANSFIELD L. SPEARS, Deceased, AETNA CASUALTY & SURETY COMPANY OF HARTFORD, CONN., and COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN,
Respondents-Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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CASES:

IN THE

Supreme Court of the United States

October Term, 1946.

No. .....

WILLIAM TALMADGE SPEARS, BETTIE TUNSELL, and ISAIAH H. SPEARS, (I. H. SPEARS),
Petitioners-Appellants,

vs.

EVA MAE SPEARS, individually and EVA MAE SPEARS, as special administrator of the estate of DR. MANSFIELD L. SPEARS, Deceased, AETNA CASUALTY & SURETY COMPANY OF HARTFORD, CONN., and COMMUNITY NATIONAL BANK of Pontiac, Michigan,
Respondents-Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

That Mansfield L. Spears departed this life, testate, on the 16th day of September 1945, a Citizen of the United

States, resident at Pontiac, Michigan leaving an estate of approximately $45,000.00, personal and real property, all in his sole name; left several wills, a wife, Eva Mae Spears, one of the defendans, a son, William Talmadge Spears, one of the petitioners, and several brothers and sisters; that Bettie Tunsell, one of the petitioners is a sister named in one of the wills; that Isaiah H. Spears, one of the petitioners, is an assignee of the other petitioners;

That all of the petitioners are citizens of California and Florida, that all the respondents are citizens of the State of Michigan.

That the amount in controversy exceeds the sum of $3,000.00, exclusive of interest and costs in favor of each petitioner as against each respondent. This is a suit of a civil nature, in equity, brought by non-resident citizens of the United States, authorized to sue, of which Federal Court are given jurisdiction by Article III, Section 2, Constitution of the United States, and Act of Congress, Section 24 (1), 28 U. S. C. A. Section 41 (1).

This case is a controversy within the meaning of Art. III Sec. 2, Const. United States.

II.

This is a suit in equity brought in the District Court of the United States for the Eastern District of Michigan, Southern Division by William Talmadge Spears, Bettie Tunsell, and Isaiah H. Spears, petitioners, against Eva Mae Spears, Individually, and Eva Mae Spears, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, Deceased, Aetna Casualty & Surety Company of Hartford, Conn., and Community National Bank of Pontiac, Michigan, Respondents, for a claimed share in the estate of Mansfield L. Spears, deceased, and asking an accounting; declaration

of heirship; construction of a will; declaration of interest of Mansfield L. Spears, deceased, Estate in the bank account in the defendant Community National Bank of Pontiac, Michigan in the sole name of Mansfield L. Spears or M. L. Spears on the 16th day of September 1945; declaration of plaintiffs' interest in the estate of Mansfield L. Spears, deceased; quieting title to the land described in complaint in William Talmadge Spears as heir at law of Mansfield L. Spears, deceased; partitioning of interest; and judgment against the administrator in such sum as may be found due under an accounting in favor of said estate (Tr. p. 1 to 10 and Supplemental Tr. Exhibit I at pages 1 and 2, Certified Record in this cause).

This is a Case and a Controversy within the meaning of Article III Section 2 Constitution of the United States and the Acts of Congress made in pursuance thereof of which the Federal Courts have jurisdiction.

The respondents were served with a summons and a copy of the complaint (see Tr. pages 11, 12, 23, 24 and 25); the respondents, each filed motion to dismiss, and Aetna Casualty & Surety Company also filed motion to QUASH (Tr. pages 11 to 22 and Supplemental Tr. Exhibits I to XI, pages 1 to 43).

The District Court rendered judgment in favor of respondents, sustaining the motions and dismissing the suit (Tr. 22 and 23).

Petitioners prosecuted an appeal from said judgment to the Circuit Court of Appeals for the Sixth Circuit, which Court on the 5th day of June 1947, affirmed the judgment of the District Court in all parts except one, and directed the District Court to dismiss said cause with prejudice. (Tr. Supplemental page 46 and following, including Opinion.)

(a) Petitioners say the Honorable Circuit Court of Appeals for the Sixth Circuit committed error in holding that the Federal Court has no jurisdiction in this case.

Suydam v. Broadnax, 14 Pet. 67; Hyde v. Stone, 20 How. 170-6; 28 U. S. C. A. 41 (1); Art. III, Sec. 2 Const. U. S.; Markham v. Allen, 326 U. S. 490 and cited Cases.

(b) Petitioners say said decision is in conflict with the decisions of other Circuit Court of Appeals in similar matter.

Miama County Nat. Bank of Paola Kansas v. Bancroft, 121 F. 2nd 921;
Blacker v. Thatcher, 145 F. 2nd 255;
Rosenberg v. Baum, 153 F. 2nd 13;

(c) Said decision is in conflict with a long line of decisions of the Supreme Court of the United States on the same Federal question as to controversies and cases within the meaning of Article III of the Constitution and the Acts of Congress made in pursuance thereof.

Markham v. Allen, 326 U. S. 490, and cases cited.

(d) The judgment of the Honorable Circuit Court of Appeals for the Sixth Circuit is in conflict with the decisions of the Supreme Court of the United States established by a long series of decisions of said Court, that Federal Courts of equity have jurisdiction to entertain suits "in favor of creditors, legatees, heirs," and other claimants against a decedent's estate "to establish their claims" so long as the Federal court does not interfere with the probate proceeding or assume general control of the property in the custody of the state court.

Markham v. Allen, 326 U. S. 490, and cases cited.

(e) The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in attempting to abdicate

its authority and jurisdiction under Art. III of the Constitution and the Acts of Congress to other jurisdictions.

Hyde v. Stone, 20 How. 170, 176;
Suydam v. Broadnax, 14 Pet. 67; 54 Am. Jur. Sec. 8, and Sec. 343.

The fact that the District Court in the exercise of the jurisdiction which Congress has conferred upon it, is required to interpret state law is not of itself a sufficient reason for withholding relief to petitioners. Mundet v. Winter Haven, 320 U. S. 228.

The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in giving judgment directing the District Court to dismiss with prejudice, since that case arises under the Constitution and Act of Congress and is not subject to restrictions or ouster by state legislation, directly or indirectly.

Art. III Sec. 2; 28 U. S. C. A. 41 (1).

And disclosing basis for contention the United States Supreme Court has jurisdiction to review the judgment, further,

(f) The petitioners-appellants are citizens of California and Florida; Respondents-appellees are citizens of Michigan; the amount in controversy exclusive of interest and costs, exceeds $3,000.00 (Tr. pages 1 to 10 and Supplemental Tr. Exhibit I pages 1 and 2); the Honorable Circuit Court of Appeals for the Sixth Circuit committed error in holding that the Federal Court was without jurisdiction and directing the District Court to dismiss with prejudice (Tr. Supplemental following page 46 and opinion).

Art. III Sec. 2, Const. U. S.
28 U. S. C. A. 41 (1);
28 U. S. C. A. 112, Sec. 2.
1 Stat. 275, 276, 28 U. S. C. A. following 723 C.
Miss. Pub. Co. v. Murphree, 326 U. S. 440, 441.

(g) The Circuit Court of Appeals for the Sixth Circuit committed error in deciding a Federal question in a way probably in conflict with the applicable decisions of the Supreme Court of the United States.

Williams *et al.* v. Green Bay & Western R. Co., 326 U. S. 560.

(h) The Circuit Court of Appeals for the Sixth Circuit has departed from the accepted and usual course of judicial, proceedings, or so far sanctioned such departure by the lower Court as to call for the exercise of the Supreme Court's supervision.

(i) The Circuit Court of Appeals for the Sixth Circuit in rendering judgment dismissing this cause with prejudice has rendered judgment in conflict with the established long series of decisions of the Supreme Court of the United States to the contrary.

Markham v. Allen, 326 U. S. 490, and cases cited.

Questions Presented.

1.

Does the District Court of the United States have jurisdiction of a suit in equity brought by petitioners against respondents to determine their asserted right to share in decedent's estate which is in course of probate administration in the state court?

2.

Has the Federal Court equitable jurisdiction to require an accounting against respondents, and in favor of the

estate, and petitioners, in order to determine petitioners' interest?

3.

Has the Federal Court jurisdiction to declare or determine heirship of William Talmadge Spears and his interest as sole heir in the estate of Mansfield L. Spears, deceased?

4.

Ha. the Federal Court jurisdiction to construe a will so as to determine such interest; to declare interest of petitioners, to declare the interest of the Mansfield L. Spears, deceased, estate in the $18,240.00 plus in the hands of the defendant, Community National Bank of Pontiac, Michigan in the sole name of Mansfield L. Spears or M. L. Spears, September 16, 1945?

5.

The Reasons relied on for the Writs.

The Const. U. S. Art. III Sec. 2, and Act of Congress 28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2, Give Federal Courts Jurisdiction, and the Judgment

of the Honorable Circuit Court of Appeals for the Sixth Circuit is in conflict with Art. III Sec. 2, U. S. Const. and the Acts of Congress made in pursuance thereof.

Section 240 (a) of the Judicial Code, Amended, provides, In any case, Civil or criminal, in a Circuit Court of Appeals, it shall be competent for the Supreme Court of the United States upon petition of any party thereto, whether government, or other litigant, to require by Certiorari,

either before, or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with the like effect, as if the cause had been brought there by unrestricted Writ of Error or Appeal.

Your petitioners believe that the aforesaid judgment of the Honorable Circuit Court of Appeals for the Sixth Circuit is erroneous and that this Honorable Court should require the said case to be certified to it for its review and determination in conformity with the provisions of the Act of Congress in such cases made and provided.

WHEREFORE, Your Petitioners respectfully pray that a Writ of Certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit Commanding the said Court to Certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case therein, entitled, William Talmage Spears, Bettie Tunsell, and I. H. Spears, Plaintiffs-Appellants-Petitioners vs. Eva Mae Spears, Individually, and Eva Mae Spears, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, deceased, Aetna Casualty & Surety Company of Hartford, Conn., and Community National Bank of Pontiac, Michigan, Defendants-Appellees-Respondents, No. 10,383, to the end that said case may be reviewed and determined by this court as provided in Judicial Code Section 240 (a) or that your petitioners may have such other or further relief or remedy in the premises, as to this court may seem meet and appropriate and in conformity with said Act and that the said judgment of the said Circuit Court of Appeals in the said

case, and every part thereof, may be reviewed by this Honorable Court.

And your petitioners will ever pray.

I. H. SPEARS,
Counsel.

GEORGE M. JOHNSON,
of Counsel.

District of Columbia, }
City of Washington. } ss.:

I. H. SPEARS, being duly sworn, says that he is Counsel for petitioners above named, and as such had personal charge for them of the Case in the foregoing petition mentioned in the District Court of the United States for the Eastern District of Michigan, and in the United States Circuit Court of Appeals for the Sixth Circuit, that he has read the said petition by him subscribed and that the facts therein stated are true to the best of his knowledge, information and belief.

I. H. SPEARS.

Subscribed and sworn to before me
this 10th day of July, 1947.
Joseph H. Greene,
(Seal) Notary Public in and for Dist. of Columbia.
My Commission expires Feb. 14, 1948.

BRIEF IN SUPPORT OF PETITION.

Petitioners are citizens of California and Florida; Respondents are citizens of Michigan; the amount in controversy as to each petitioner as against each respondent is in excess of $3,000.00, exclusive of interest and costs (R. 1 to 6).

Petitioners brought this suit in equity in the United States District Court for the Eastern District of Michigan, Southern Division, asserting an interest in the estate of Mansfield L. Spears, deceased, which estate is in course of probate administration in a state court. This suit is brought against the respondents, and petitioners ask an accounting, declaration of heirship, construction of a will, declaration of interest of petitioners in the estate of Mansfield L. Spears, deceased, declaration of interest of the estate in and to the $18,234.00 plus in the hands of the defendant, Community National Bank of Pontiac, Michigan in the sole name of Mansfield or M. L. Spears on the 16th day of September 1945; quieting title and partition (R. 1 to 10, Supp. R. Exhibit I, pages 1 and 2).

Article III of the Constitution provides that the judicial power of the United States shall extend to all cases between citizens of different states, and this section gives the District Court original jurisdiction of such cases, and using the language of the Court "one of the grounds of Federal Jurisdiction in Federal Court, is Diversity of Citizenship."

The Federal Courts have jurisdiction of controversies arising during the pendency of the administration of estates of decedents in the state Courts which condition the enforcement of their judgments or decrees or the rights of action of citizens of other states, or other parties, who might in-

voke their actions and their decisions prevail over the statutes of the states and the decisions of their Courts.

Art. III, Sec. 2, Const. U. S.
Act of Congress, 28 U. S. C. A. 41 (1).
Act of Congress, 28 U. S. C. A. 112, Sec. 2, 111 U. S. 223; 121 F. 2nd 921; 150 F. 2nd 679;
Blacker v. Thatcher, 145 F. 2nd 255 (R. 29).

The District Court on motion of respondents dismissed said suit (R. 12 to 23).

The petitioners appealed to the Circuit Court of Appeals for the Sixth Circuit (R. 26 to 28).

On June 5th, 1947, upon consideration of the record in said suit, the Honorable Circuit Court of Appeals for the Sixth Circuit dismissed said suit with prejudice (R. following page 46, and Opinion, Supplemental Record), which action was in conflict with the action of Circuit Court of Appeals of other Circuits, and the Supreme Court of the United States.

Griffith v. Bank of N. Y., 147 F. 2nd 899;
Miama County Nat'l Bank of Paola, Kansas v. Bancroft, 121 F. 2nd 921, Sylb. 2, 3, 4, 5, 10 11, 12;
R. C. P. Rule 12 (b), U. S. C. A. following 723c.
Kaffenberger v. Kremer, *et al.*, 4 F. R. D. 476-478;
Wieland v. Wickard, 250;
Burghane v. Radio Corp. of A., 4 F. R. D. 446;
U. S. v. Assn. Am. R. R., *et al.*, 4 F. R. D. 510;
Application Wis. Alum. Research Foundation, 4 F. R. D. 263;
Wall & B. Corp. v. Munson Lines, 58 F. Supp. 101-109;
Canal v. Munson Hotel Co., 149 F. 2nd 404; 61 F. Supp. 1;

Powell v. Rothensris, 47 F. Supp. 1019;
Lehigh Valley R. Co. v. Peaslee, 47 U. S. 55;
Boston Casualty Co. v. Bath Iron Works Corp., 47 F. Supp. 616;
Roselle v. Quinn, 47 F. Supp. 740;
Monhair v. Higgins, 39 F. Supp. 633; 132 F. 2nd 990;
Bowles v. Schultz, 54 F. Supp. 708;
Bowles v. Ohse, 4 F. R. D. 404;
Rule 8, 28 U. S. C. A. following 723c.

Said judgment entered in this cause by the Honorable Circuit Court of Appeals for the Sixth Circuit, on the 5th day of June 1947, is in conflict with the decisions of other Circuit Court of Appeals on the same questions; has decided an important Federal question in a way probably in conflict with applicable decisions of this Court, and has so far departed from the accepted and usual course of Judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

Suydam v. Broadnex, 14 Pet. 67;
Hyde v. Stone, 20 How. 175.
Union Bank v. Jolly, Adm'r, 18 How. 503;
Markham v. Allen, 326 U. S. 490, and cited cases.

The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in dismissing said suit with prejudice, for that said judgment is in conflict with a well established long series of decisions of this court, that the Federal Courts of equity have jurisdiction to entertain suits "in favor of creditors, legatees, and heirs" and other claimants, against a decedent's estate "to establish their claims" as long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the pro-

bate or control of the property in the custody of the state court.

Suydam v. Broadnax, 14 Pet. 67;
Payne v. Hook, 7 Wall. 425, 430;
Blacker v. Thatcher, 145 F. 2nd 255; 324 U. S. 848; 158 A. L. R. 1;
Markham v. Allen, 326 U. S. 490, and cases cited.

The Circuit Court of Appeals for the Sixth Circuit by its judgment entered in this cause on the 5th day of June 1947, committed error by denying each of the five propositions urged by petitioners as set out in the transcript of record (R. 28, 29, and 30 which is made a part of this brief by reference, and urged as grounds for reversal of the judgment of the Circuit Court of Appeals for the Sixth Circuit as fully as same was urged for reversal of the judgment of the District Court (R. 28-30).)

Argument.

The jurisdiction of the federal court to determine heirship, and interest of creditors, legatees, heirs, and other claimants, is derived from the Constitution and Statutes of the United States, and may not be restricted, or abridged by a state's establishing courts and giving them exclusive jurisdiction over the settling of estates of decedents.

When Diversity of Citizenship and the requisite jurisdictional amount are present, Federal Courts have jurisdiction in equity to determine whether litigants are heirs of a deceased person and their share or asserted interest in his estate.

U. S. Const. Art. III, Sec. 2; 28 U. S. C. A. 41 (1); 28 U. S. C. A. 112, Sec. 2; 1 Stat. 275, 276, 28 U. S. C. A. following Section 723c;
Markham v. Allen, 326 U. S. 490, and cited cases.

The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in dismissing said suit with prejudice, on the 5th day of June 1947, thereby affirming the District Court's error in sustaining each of the motions to dismiss filed by respondents, since said motions, each, admits all matter well plead as set out in paragraph 1 of page 29 of record and paragraph 3 of same page, which errors are also urged before this Court (R. 29 and 30).

Griffith v. Bank of N. Y., 147 F. 2nd 899;
Miama County Nat'l Bank of Paola, Kansas v. Bancroft, 121 F. 2nd 921 Syl. 2, 3, 4, 5, 10, 11, 12;
R. C. P. Rule 12 (b), 28 U. S. C. A. following 723c.

This is a controversy and a case within the meaning of Article III of the Constitution, between each of the appellants and each of the respondents (Tr. Par. 4, (a) (b) (c) P. 29, 30).

Art. III, Sec. 2, Const. U. S.; 28 U. S. C. A. 41 (1); 28 U. S. C. A. 112, Sec. 2;
Markham v. Allen, 326 U. S. 490;
Waterman v. Canal Louisiana Bank & Trust Co., 215 U. S. 33;
First National Bank v. Bridgeport Trust Co., 117 Fed. 969;
Garret v. First National Bank & Trust Co., 153 F. 2nd 289.

The Federal Courts cannot decline to hear the issues in a suit of which they have jurisdiction merely because the same questions are pending in a state court between the same parties; the Federal Courts cannot abdicate their authority, or duty in any case in favor of another jurisdiction.

Suydam v. Broadnax, 14 Pet. 67;
Art. III Const. U. S.;
McClelland v. Garland, 217 U. S. 258;

Hastings v. Selby Oil Co., 319 U. S. 348;
Pure Oil Co. v. Standard Oil Co., 2 F. 2nd 260;
Banon v. Burnside, 121 U. S. 186;
Sutton v. English, 246 U. S. 199;
Byers v. MaAuley, 149 U. S. 608;
54 Am. Jur. Sec. 8 and Sec. 343;
Blacker v. Thatcher, 145 F. 2nd 255;
Rosenberg v. Baum, 153 F. 2nd 13;
Markham v. Allen, 326 U. S. 490.

Respectfully submitted,

I. H. SPEARS,
Counsel.

GEORGE M. JOHNSON,
of Counsel.

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Supreme Court of the United States

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No. 229

WILLIAM TALMADEGE SPEARS, *et al.*,
Petitioners,

vs.

EVA MAE SPEARS, *et al.*,
Respondents.

~~APPEAL FROM THE SUPREME COURT OF THE STATE OF~~

PETITIONERS' REPLY TO RESPONDENTS' BRIEF

I. H. SPEARS, *Counsel.*

GEORGE M. JOHNSON,
Of Counsel.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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Citations.

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EVA MAE SPEARS, *et al.*,
Respondents.
No. 229.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF

Petitioners say the jurisdiction of the United States Supreme Court is invoked under the authority of the United States Constitution and the Acts of Congress as set forth on pages 2, 3, 4, 5, 6 of petition for Writ of Certiorari and brief in support thereof, pages 10, 11, 12, 13, 14, 15.

Respondents' statement of case (pp. 2-6) shows that several cases are pending in the state court affecting the subject matter of this suit; but that part of the statement at the bottom of page 3 is an erroneous statement of facts, the truth is, at the time of the death of decedent there was an account in the Community National Bank of Pontiac, Michigan, which stood in the sole name of Mansfield L. Spears, and not a joint account as there stated.

Petitioners say the decree entered on May 6, 1946, by the Circuit Court of Oakland County, Michigan in favor of

Eva Mae Spears with reference to said bank account is void, and of no force and effect for the reason the Circuit Court of Oakland County, Michigan, did not have jurisdiction; that the estate of Mansfield L. Spears, deceased was in course of administration in the Probate Court of Oakland County, Michigan; that said Probate Court had exclusive jurisdiction of the administration of estates of deceased persons; that said proceedings could in no way affect the jurisdiction of the Federal court in this cause.

The relief prayed by petitioners is disclosed by the record (pp. 1-10 and Supp. Tr. Exhibit I, at pages 1 and 2 and page 3 of petition for Writ).

The petitioners seek only to have the court determine the interest of petitioners, and the interest of the estate of Mansfield L. Spears, deceased, in the estate of Mansfield L. Spears, deceased, which is in the course of administration in the probate court of Oakland County, Michigan; there is no dispute as to the pendency of the several actions in the state court; except, the pendency of these actions does not affect the jurisdiction of the Federal Court in cases of diversity of citizenship.

The jurisdiction of the probate court of Oakland County, Michigan, of the estate of Mansfield L. Spears, deceased, is exclusive as to the state courts; and no other state court has jurisdiction of any part of said estate.

Therefore, the circuit court judgment mentioned in Respondents' brief at the top of page 4, dated April 16, 1946, is void because the trial court had no jurisdiction over the administratrix, or over the subject matter; and because the decree involves and ousts the lawful jurisdiction of the probate court; and such proceedings void, or otherwise, would not affect the jurisdiction of the Federal court.

Anno. Stats. Michigan, Rev. Sec. 27.3178(19);
Brooks v. Hargrave, 179 Michigan 136;
Tyson v. Jeans, 204 Michigan 403;
In Re Shadley's Estate, 279 Michigan 156;
In Re Butt's Estate, 173 Michigan 504;
Schultz v. Carlson, 313 Michigan 323;
Barkwell v. Same, 313 Michigan 432.

Rule 12 (b) F. R. C. D. is a rule of procedure, and not jurisdiction, and must be followed as set forth therein.

Columbian Cat Fanciers Inc. v. Koehne *et al.*, 96 F. 2nd 530-532 (speaking demurrer);
Bowles Adm'r v. Glick Bro. L. Co., 146 F. 2nd 566.
Van Kirk *et al.* Campbell *et al.*, 7 F. R. D. 231;
Keefe v. Devonian, 6 F. R. D. 11;
Weis v. Los Angeles Broadcasting Co. *et al.*, 6 F. R. D. 33;
Miller v. National City Bank of N. Y. *et al.*, 147 F. 2nd 798;
Great Northern Life Ins. Co. v. Read Ins. Commission, 322 U. S. 49.

Argument

Jurisdiction of this court is urged as set forth in petition for Writ of Certiorari and brief in support at pages 13, 14, 15.

The Circuit Court of Appeals for the Sixth Circuit committed error as alleged in petition for writ of certiorari in sustaining the challenge of defendants, by motion to dismiss.

The motion of defendants to dismiss is a speaking demurrer or motion which attempts, in addition to raising the question of sufficiency of the bill of complaint to state a

cause of action, to introduce affirmative facts which if relevant, is properly part of an answer, but not of a motion.

Columbian Cat Fanciers Inc. v. Koehne *et al.*, 96 F. 2nd 530-532;

Gaines v. Gaines, 157 F. 2nd 521;

Great Northern Life Ins. Co. v. Read Ins. Commission, 322 U. S. 49;

Miller v. National City Bank of N. Y. *et al.*, 147 F. 2nd 798:

And as to the effect of the judgment mentioned by respondents anent the bank account, Michigan Laws, Act No. 288, Chap. 1, Sec. 19, Pub. Acts 1939 as amended by Act No. 26, Pub. Acts 1941, Stat. Ann. 1943, Rev. Sec. 27.3178(19), Provide: "Each judge of Probate shall have jurisdiction:

"5. And shall have and exercise all such other powers and jurisdiction as are or may be conferred by law."

The Supreme Court of Michigan in Brooks v. Hargrave, 179 Michigan 136, said "It is well established in this state that the *probate court has exclusive jurisdiction of all matters relative to the settlement of estates of deceased persons* * * * there can be no question that the probate court assumed jurisdiction of the subject matter in controversy when the will was admitted to probate and the defendant qualified as executor. It does not lose jurisdiction until the estate is finally closed. Having assumed jurisdiction, it has exclusive jurisdiction and no other court save an appellate one which subsequently assumes to act in the matter, should proceed further when the priority of jurisdiction is called to its attention." Cited in

Schultz v. Carlson, *supra,* Barkwell v. Same, *supra,*

hence the judgment in favor of Respondent, Eva Mae Spears, mentioned in Respondents' statement, is void, and

may be attacked any time or place, direct or collateral; and whether void or not, does not affect Federal jurisdiction in this cause.

The Respondents have failed to meet the issue raised, and questions presented by petitioners' Application for Writ of Certiorari and therefore, Petitioners reassert their claim for RELIEF as prayed for in their petition for Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,

I. H. SPEARS, *Counsel.*

GEORGE M. JOHNSON,
Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 229

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Petitioners and Appellants Below,

v.

EVA MAE SPEARS, Individually, and EVA MAE SPEARS as Special Administratrix of the Estate of Mansfield L. Spears, Deceased, THE AETNA CASUALTY AND SURETY COMPANY of Hartford, Connecticut, and COMMUNITY NATIONAL BANK of Pontiac, Michigan,
Respondents and Appellees Below.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENTS

OPINION BELOW

The opinion in the Circuit Court of Appeals is reported in .....F. (2d) ..... (Supp. to Supp. R. 47-52).

JURISDICTION

Petitioners have invoked the jurisdiction of this Court under Section 1(a) of the Act of February 13, 1925, as amended, U. S. C. A. Title 28, Section 347(a). The judgment of the Circuit Court of Appeals was entered on June 5, 1947. (Supp. to Supp. R. 46).

I

STATEMENT OF THE CASE

This is an action praying for equitable relief brought in the District Court of the United States for the Eastern District of Michigan, Southern Division, by William Talmadge Spears, Bettie Tunsell, and I. H. Spears, petitioners herein, against Eva Mae Spears, individually, and as special administratrix of the estate of Mansfield L. Spears, deceased, The Aetna Casualty and Surety Company, surety on the bond of the special administratrix, Leon H. Hubbard, successor special administrator of the estate of Mansfield L. Spears, deceased, and Community National Bank of Pontiac, Michigan, respondents herein, on May 25, 1946, growing out of the following facts:

Mansfield L. Spears, a resident of Oakland County, Pontiac, Michigan, died on September 16, 1945. He left surviving him his widow, Eva Mae Spears, one of the respondents herein, and William Talmadge Spears, one of the petitioners herein as his heirs at law and next of kin. Between March 28, 1945, and the date of his death, the decedent executed three successive wills, namely, one on March 28, 1945, one on August 13, 1945, and one on August 27, 1945, and in each of which he specifically revoked all prior wills (R. 3, 4, 12; Ex. VI, Supp. R. 14).

The will executed on August 27, 1945, was presented to the Probate Court of Oakland County, Michigan, by Eva Mae Spears, the surviving widow, as the Last Will and Testament of the decedent, and the petitioners and other relatives objected to the admission of that will to probate, and gave notice that they would contest its validity (Ex. I, Supp. R. 1, Ex. IV, Supp. R. 8, 9, 10).

On petition of the contestants, the Probate Court certified the contest to the Circuit Court of Oakland County, Michigan, in accordance with the provisions of Section 27, 3178 (36) of Michigan Annotated Statutes (Ex. V, Supp. R. 11, 12). By its decree entered on May 9, 1946, the Circuit Court of Oakland County, Michigan, allowed the will executed on August 27, 1945, as the Last Will and Testament of Mansfield L. Spears, deceased, and directed the Probate Court to admit it to probate (Exs. VI, VII, Supp. R. 14-19).

The Probate Court of Oakland County, Michigan, appointed Eva Mae Spears special administratrix to take charge of, and protect, the estate of Mansfield L. Spears, deceased, pending a decision in the will contest in the Circuit Court, and The Aetna Casualty and Surety Company became the surety on her bond (R. 2).

Subsequently, on petition of the contestants, the Probate Court removed Eva Mae Spears as special administratrix, and appointed Leon H. Hubbard as her successor (Exs. II, III, Supp. R. 5, 6, 7). Thereafter, Eva Mae Spears filed her account as special administratrix, to which the contestants and petitioners filed objections, and after a hearing, the Probate Court allowed the account, and discharged Eva Mae Spears and released her surety from liability.

At the time of the decedent's death, there was an account in Community National Bank of Pontiac, Michigan, which stood in the joint names of Mansfield L. Spears and Eva Mae Spears, with the right of survivorship. A controversy arose between the petitioners and Eva Mae Spears over the ownership of the joint bank account. Eva Mae Spears filed a suit in the Circuit Court of Oakland County, Michigan, in which she joined petitioners and

others claiming an interest in the estate, and Community National Bank as parties defendant, to establish her ownership of the bank account as the surviving joint depositor (Exs. VIII, IX, Supp. R. 20-31). The Circuit Court, by its "opinion" dated April 16, 1946 (Ex. X, Supp. R. 32-38), and its "amended decree" entered on May 6, 1946, held that the joint deposit in Community National Bank survived to, and became the sole property of, Eva Mae Spears upon the death of Mansfield L. Spears, and that it was no part of his estate for administration (Ex. XI, Supp. R. 39-42).

Petitioners appealed from the decrees of the Circuit Court of Oakland County, Michigan, in both the will contest and the suit of Eva Mae Spears to establish ownership of the joint bank deposit to the Supreme Court of Michigan, and that court dismissed both appeals on March 4, 1947, whereupon I. H. Spears, one of the petitioners herein, prosecuted appeals to this court where they were treated as petitions for certiorari, and were both denied by this court on June 2, 1947. (*Spears v. Spears*, U. S. ....., 67 S. Ct. 1517, 1524.)

It was against this background that this action was brought in the District Court. The complaint recites some of the facts set forth herein, and it particularly mentions the wills executed on March 28, 1945, and on August 13, 1945, and quotes the latter at length (R. 3, 4, 5), but it fails to mention the will executed on August 27, 1945, or the fact that it had been admitted to probate after a contest. Neither did the complaint mention the fact that the Circuit Court of Oakland County, Michigan, had adjudged the ownership of the joint deposit in Community National Bank. The complaint also omitted any mention of the fact that Eva Mae Spears had filed her account as special ad-

ministratrix which had been allowed by the Probate Court of Oakland County, Michigan, over the objections of petitioners, and that she and her surety had been discharged from liability.

The prayer for relief was: (1) that the District Court admit the will executed on August 13, 1945, to probate as the Last Will and Testament of Mansfield L. Spears, deceased; (2) for a determination of the heirs of the deceased; (3) for an adjudication of the ownership of the joint bank account in Community National Bank; (4) for an accounting of the fiduciaries appointed by the Probate Court of Oakland County, Michigan; (5) for a decree of distribution of the estate in accordance with the provisions of the will executed on August 13, 1945; and (6) for a decree to quiet title in real estate (R. 5-10).

All of the defendants below, except Leon H. Hubbard, special administrator, filed separate motions to dismiss the suit under Rule 12(b), (1), (2), (4), (5), and (6 of Federal Rules of Civil Procedure, and annexed as exhibits thereto certified transcripts of the proceedings in the State Courts to show: (1) lack of jurisdiction over the subject-matter; (2) failure of the complaint to state a claim upon which relief could be granted; and (3) lack of jurisdiction over The Aetna Casualty and Surety Company because of improper service of process (R. 12-22, Exs. I-XI, Supp. R. 1-43).

The District Court sustained all motions, and dismissed the suit without prejudice to the rights of petitioners to refile it at the conclusion of the litigation in the State Courts, and it quashed the service of process on The Aetna Casualty and Surety Company on account of insufficient and improper service (R. 22, 23). Petitioners appealed from the District Court's order of dismissal, and

the Circuit Court of Appeals affirmed that order, except that the District Court was directed to dismiss the suit with prejudice (Supp. to Supp. R. 47-52).

II

QUESTIONS PRESENTED

(1) Whether the Federal Court has jurisdiction to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate.

(2) Whether the Federal Court has jurisdiction to require an accounting of a fiduciary appointed by a State Court.

(3) Whether the Federal Court can interfere with property in the custody and possession of a State Court.

(4) Whether the probate of wills and the administration of estates constitute a suit or action *inter partes* within the equity jurisdiction of the Federal Court.

(5) Whether Rule 12(b) of Federal Rules of Civil Procedure authorizes "speaking motions" to traverse the truth of the allegations of a complaint as to jurisdiction.

III

SUMMARY OF ARGUMENT

POINT A

The decision of the Circuit Court of Appeals as to the lack of jurisdiction in the Federal Court to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate; or to require an accounting of fiduciaries appointed by a State Court; or to adjudicate the ownership of property in the possession and control of a State Court, is not in conflict with the Circuit Court of Appeals of any other Circuit.

POINT B

The decision of the Circuit Court of Appeals as to the nature of probate proceedings under the statutes and decisions of Michigan is not an important question of local law which is in conflict with applicable local decisions.

POINT C

The decision of the Circuit Court of Appeals, by holding that the probate of wills and the administration of estates in Michigan is not a suit or action *inter partes* within the equity jurisdiction of the Federal Court, involves no important question of federal law which has not been passed upon, and settled by this Court.

POINT D

The decision of the Circuit Court of Appeals as to the effect of a motion to dismiss under Rule 12(b), Federal

Rules of Civil Procedure, by holding that where the motion traverses the truth of the allegations as to jurisdiction, and recites facts *de hors* the record, it does not constitute an admission of facts, is not a decision of a federal question in a way in conflict with applicable decisions of this Court.

POINT E

The decision of the Circuit Court of Appeals as to lack of jurisdiction in the Federal Court to grant any of the relief prayed for in petitioners' complaint, by holding that the suit should be dismissed with prejudice, neither departs from the accepted and usual course of judicial proceedings, nor sanctions such a departure by a lower court, and it does not call for an exercise of this Court's power of supervision.

IV

ARGUMENT

Point A

The decision of the Circuit Court of Appeals as to the lack of jurisdiction in the Federal Court to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate; or to require an accounting of fiduciaries appointed by a State Court; or to adjudicate the ownership of property in possession and control of a State Court, is not in conflict with the Circuit Court of Appeals of any other circuit. On the contrary, there is complete harmony in the decisions of the Circuit Courts of Appeals for the several circuits on the same matter.

O'Connor v. Slaker, 22 F. (2d) 147, Appeal Dismissed, 278 U. S. 188.
Guilfoil v. Hayes, 86 F. (2d) 544.
Caesar v. Burgess, 103 F. (2d) 503.
Miami County National Bank v. Bancroft, 121 F. (2d) 921.
Blacker v. Thatcher, 145 F. (2d) 255.

There is no conflict between the several circuits, for the several Circuit Courts of Appeals have adopted the rule established in this Court by a long line of decisions on the same question.

Broderick's Will, 21 Wall. 503.
O'Callaghan v. O'Brien, 199 U. S. 89.

Waterman v. Canal-Louisiana Bank & Trust Co., 215 U. S. 33.
Sutton v. English, 246 U. S. 199, 205.
Princes Lida v. Thompson, 305 U. S. 456.
Markham v. Allen, 326 U. S. 490.

Point B

The decision of the Circuit Court of Appeals as to the nature of probate proceedings under the statutes and decisions of Michigan is not an important question of local law which is in conflict with applicable local decisions. On the contrary, the decision by the Circuit Court of Appeals in the instant case is in complete harmony with the local decisions. The Statutes of Michigan provide for the procedure to be followed in probating a will, and in disposing of estates of deceased persons, and protection is provided for the rights of all parties in interest.

Michigan Statutes Annotated, Section 27.3178 (19), (36), (50), (91), and (94).

The Supreme Court of Michigan has held that the probate of wills and the administration of estates are not proceedings *in personan*, but belong rather to a class of action *in rem* or *quasi in rem*.

Stevens v. Hope, 52 Mich. 65, 17 N. W. 698.
In re Brown's Estate, 198 Mich. 544, 165 N. W. 929.
Calhoun v. Cracknell, 202 Mich. 430, 168 N. W. 547.
Thompson v. Thompson, 229 Mich. 526, 201 N. W. 533.

In the case of *Thompson v. Thompson*, supra, the Court specifically held that the administration of estates is not in the nature of a suit between parties.

Point C

The decision of the Circuit Court of Appeals, by holding that the probate of wills and the administration of estates in Michigan is not a suit or action *inter partes* within the equity jurisdiction of the Federal Court, involves no important question of federal law which has not been passed upon, and settled by this Court. While the questions involved relate to the jurisdiction of a Federal Court over the probate of a will, the administration of an estate, including the accounting of the fiduciary, and the property in possession of a State Court, and while the jurisdiction of Federal Courts is governed by federal law, this Court has already settled those questions insofar as they are presented by the facts of the instant case.

Broderick's Will, 21 Wall. 503.
Byers v. McAuley, 149 U. S. 608.
O'Callaghan v. O'Brien, 199 U. S. 89.
Waterman v. Canal-Louisiana Bank & Trust Co., 215 U. S. 33.
Sutton v. English, 246 U. S. 199.
Penn. General Casualty Co. v. Pennsylvania, 294 U. S. 189, 105, 106.
United States v. Bank of New York & Trust Co., 296 U. S. 463, 477.
Markham v. Allen, 326 U. S. 490, 494.

The uncontroverted facts of this case demonstrate clearly that the District Court lacked jurisdiction over the subject-matter of the complaint filed by petitioners upon any theory when those facts are measured by the rules laid down by this Court in *O'Callaghan v. O'Brien*, supra. The Circuit Court of Appeals scrupulously followed the decisions of this Court in its decision.

Point D

The decision of the Circuit Court of Appeals as to the effect of a motion to dismiss under Rule 12(b), Federal Rules of Civil Procedure, by holding that where the motion traverses the truth of the allegations as to jurisdiction, and recites facts *de hors* the record, it does not constitute an admission of facts, is not a decision of a federal question in a way in conflict with applicable decisions of this Court. On the contrary, the Circuit Court of Appeals followed the decisions of this Court in holding that the respondents properly annexed affidavits and certified transcripts of the proceedings in the State Courts to traverse the truth of the allegations of petitioner's complaint as to jurisdiction.

Kvos, Inc. v. Associated Press, 299 U. S. 269, 278.

The burden rested upon petitioners to support their jurisdictional allegations by competent proof when the truth of those allegations was challenged by respondents in any appropriate manner.

McNutt v. General Motors Acceptance Corp., 298 U. S. 178, 189.

Petitioners had to allege in their complaint the facts essential to show that the District Court had jurisdiction. They attempted to do so by concealing the existence of a will which had been admitted to probate after a contest, and by suppressing the facts pertaining to the State Court litigation (R. 1-10). If they failed to make the jurisdictional allegations, they would have no standing. If they made the necessary allegations and if they were untrue, they would likewise have no standing. Rule 12(b), Federal Rules of Civil Procedure, authorized the respondents to challenge the truth of the allegations as to jurisdiction by motions

to which were annexed exhibits which evidenced uncontradicted facts to show that the jurisdictional allegations were not true, and that the Court was without jurisdiction to grant the relief prayed for in the complaint.

Gallup v. Caldwell, 120 F. (2d) 90.
Boro Hall Corp. v. General Motors Corp., 124 F. (2d) 822, Certiorari denied, 317 U. S. 695.
Victory v. Manning, 128 F. (2d) 415.
Samara v. United States, 129 F. (2d) 594.
Ellis v. Stevens, 37 Fed. Supp. 488.
Yudin v. Carroll, 57 Fed. Supp. 793.

Point E

The decision of the Circuit Court of Appeals as to lack of jurisdiction in the Federal Court to grant any of the relief prayed for by petitioners, by holding that the suit should be dismissed with prejudice, neither departs from the accepted and usual course of judicial proceedings, nor sanctions such a departure by a lower court, and it does not call for an exercise of this Court's power of supervision. The suggestion in petitioners' petition and brief that the Circuit Court of Appeals has departed from the accepted and usual course of judicial proceedings, or has sanctioned such a departure by the District Court, is almost too frivolous to require reply. Certainly there is nothing in the history of this case to suggest that either the District Court or the Circuit Court of Appeals has in any way violated the integrity of the federal judicial process. The petitioners were the ones who were seeking to have the District Court and the Circuit Court of Appeals depart from the accepted and usual course of judicial proceedings.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for a writ of certiorari should be denied.

ELMER W. BEASLEY,
WALTER A. MANSFIELD,
GEORGE A. SUTTON,
Counsel for Respondents.

Dated August 14, 1947.

CERTIORARI

DENIED